

IN THE
MISSOURI SUPREME COURT

STATE EX REL. RICHARD A.)	
CUTHBERTSON,)	
)	
Relator,)	
)	
vs.)	No. SC 86016
)	
THE HONORABLE)	
JOHN JACOBS,)	
CIRCUIT JUDGE OF)	
OZARK COUNTY BY,)	
ASSIGNMENT,)	
44 TH JUDICIAL CIRCUIT,)	
)	
Respondent.)	

APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF OZARK COUNTY, MISSOURI
44TH JUDICIAL CIRCUIT, DIVISION 1, BY ASSIGNMENT
THE HONORABLE JOHN JACOBS, JUDGE

RELATOR'S STATEMENT, BRIEF AND ARGUMENT

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JURISDICTIONAL STATEMENT

This case involves a petition for writ of prohibition or, in the alternative, mandamus to require Respondent, the Honorable John Jacobs, to grant Relator's motion of February 26, 2004, filed in the Circuit Court of Ozark County, for change of judge pursuant to Rule 32.07. This Court has jurisdiction on an original writ case pursuant to Rules 84.22 and 84.23.

STATEMENT OF FACTS

Relator was originally charged in Ozark County in five-count misdemeanor information in Case No. CR403-1323M on December 17, 2003 (See Relator's Exhibit 1, A6). Relator made his initial appearance without counsel before Respondent, sitting as judge in the Circuit Court of Ozark County, Associate Division, on January 13, 2004. At that time, the matter was set for trial on February 24, 2004, at 10 a.m. (Relator's exhibit 2, A9). From the context, it may be fairly inferred that an initial plea of not guilty was entered for Relator and - from subsequent actions taken by Relator - that he was advised to seek representation in the matter and/or to apply to the Area 44 office of the State Public Defender for services. Ultimately the Relator applied, and qualified for, State Public Defender services and Counsel for Relator entered his appearance in the underlying matter on or about January 29, 2004.

Relator's motion for jury trial, was filed on February 20, 2004 (Relator's Exhibit 3, A11), and Respondent granted the same. The court file was certified and transferred to the Circuit Division (Relator's Exhibit 4, A12), and the Presiding Judge of the 44th Judicial Circuit assigned the case, pursuant to 44th Circuit Court Rule 7.3, to Respondent, sitting as Circuit Judge by assignment (Relator's Exhibit 5, A14).

On February 26, 2004, Relator's first and only motion for change of judge was filed (Relator's Exhibit 6, A15) and was denied on February 27, 2004. Relator filed a motion and brief to reconsider on March 5, 2004 (Relator's Exhibit 7,

A17), and that was denied in a written order (Relator's Exhibit 8, A23) on the same day. At no time prior to the filing of his motion for change of judge or prior to his motion to reconsider had Relator appeared in court in the underlying cause with counsel.

Relator first sought a Writ of Prohibition or, in the alternative, Mandamus in the Southern District Court of Appeals to require Respondent to grant Relator's motion of February 26, 2004, and that court denied the petition for Writ, Case No. 26184-2 (Relator's Exhibit 9, A24). Relator then filed his petition for Writ before this Honorable Court.

POINTS RELIED ON

I.

A Writ of Prohibition or, in the alternative, Mandamus should issue to compel the granting of Relator's motion for change of judge pursuant to Rule 32.07 because an associate circuit judge who would preside over a misdemeanor matter which was then duly transferred for jury trial and who would subsequent deny timely application for change of judge under Rule 32.07 after designation as trial judge for jury trial in the same cause by operation of a local circuit court is without jurisdiction to do so in that the plain meaning of Rule 32.07 allows a defendant to apply for change of the trial judge within ten days of the designation of that judge if that designation occurs more than ten days after the initial plea is entered and, if timely, requires that judge to promptly sustain that application.

State v. Kelly, 966 S.W.2d 382 (Mo.App. E.D., 1998);

State v. Hornbeck, 707 S.W.2d 809 (Mo.App. E.D., 1986); and

State ex re. Stubblefield v. Bader, 66 S.W.3d 741 (Mo.banc 2002)

II.

A Writ of Prohibition or, in the alternative, Mandamus should issue to compel the granting of Relator's motion for change of judge pursuant to Rule 32.07 because a designated trial judge's interpretation of a local circuit court rule for administrative assignment of misdemeanor causes for jury trial before a circuit judge such that a defendant's application under Rule 32.07 would be denied for failure to apply within ten days after initial plea before an associate circuit judge where that associate circuit judge is also the designated trial judge by operation of the court rule is misplaced in that such an interpretation of such a local rule specifically prohibits what Rule 32.07 permits as well as being unduly burdensome to a defendant in a manner inconsistent with the Missouri Supreme Court Rules and well-established law.

State ex rel. State v. Riley, 992 S.W.2d 195 (Mo. banc 1999); and

State ex rel. Burns v. Gillis, 102 S.W.3d 66 (Mo.App. W.D., 2003).

ARGUMENT

I.

A Writ of Prohibition or, in the alternative, Mandamus should issue to compel the granting of Relator's motion for change of judge pursuant to Rule 32.07 because an associate circuit judge who would preside over a misdemeanor matter which was then duly transferred for jury trial and who would subsequent deny timely application for change of judge under Rule 32.07 after designation as trial judge for jury trial in the same cause by operation of a local circuit court is without jurisdiction to do so in that the plain meaning of Rule 32.07 allows a defendant to apply for change of the trial judge within ten days of the designation of that judge if that designation occurs more than ten days after the initial plea is entered and, if timely, requires that judge to promptly sustain that application.

The rules of construction are identical for Supreme Court rules and legislative enactments, *State v. Kelly*, 966 S.W.2d 382, 384 (Mo.App. E.D. 1998), citing *State v. Windmiller*, 579 S.W.2d 730, 732 (Mo.App. E.D. 1979), and the practice is to give words used their plain and ordinary meaning, trying to harmonize all provisions if possible. *Id.*, citing *Lindsay v. Hopkins*, 788 S.W.2d 776 (Mo.App. E.D.1990). A liberal rule of construction therefore entails, generally, construing language liberally in favor of a defendant and strictly against the state. See *State v. Hornbeck*, 707 S.W.2d 809, 810 (Mo.App. E.D. 1986),

citing *State v. Treadway*, 558 S.W.2d 646 (Mo. banc 1977), *cert den.* 439 U.S.

838. Any doubt as to the meaning of a statute or rule must be resolved in favor of the defendant. See *Id.*, citing *State v. Scilagyi*, 579 S.W.2d 814 (Mo.App.W.D. 1979).

Moreover, because Rule 32.07 (excerpted version at A1), together with its parallels in Rule 51.05 (for civil cases) and Rule 126.01 (for juvenile/family courts), are measures intended by the Missouri Supreme Court to foster confidence in the impartiality of the state judicial system and the right to disqualify a judge is one of the keystones of the administration of the Missouri judicial department, Missouri courts specifically adhere to a rule of liberal construction in favor of the right to disqualify. See *State ex rel. Stubblefield v. Bader*, 66 S.W.3d 741, 742 (Mo. banc 2002), citing *State ex rel. Horton v. House*, 646 S.W.2d 91, 93 (Mo. banc 1983).

With the above in mind, it is clear from the plain meaning of Rule 32.07 that an order for change of judge is dependent on the timeliness of the written application and that Relator complied with the time requirements of the Rule. Under Rule 32.07(b)¹, timeliness is established in two ways. In the first sentence

¹ “(b) In felony and misdemeanor cases the application must be filed not later than ten days after the initial plea is entered. If the designation of the trial judge occurs more than ten days after the initial plea is entered, the application shall be filed

of Rule 32.07(b), in felony and misdemeanor cases, when there is a judge present who is able to take a defendant's initial plea, the time limit for application is not later than ten days afterwards. In the second sentence - still referencing felony and misdemeanor cases - if the assignment of judge takes place more than ten days after the initial plea is entered, a defendant's ten-day window of opportunity to move for change of judge is available under two additional circumstances: either (a) ten days after designation of the trial judge or (b) not later than ten days before trial or a proceeding on the record, whichever comes first. If timely application is made, it

Relator complied with the plain meaning of the Rule in his application, by and through counsel, of February 26, 2004. Relator entered an initial plea on January 13, 2004. Relator moved for jury trial pursuant to Rule 27.01 on February 20, 2004, and Relator, sitting as Associate Circuit Judge in Ozark County certified the underlying matter to Trial Division that same day. Also effective February 20, 2004, the Presiding Judge of the 44th Judicial Circuit, by and through the operation of 44th Circuit Local Rule 7.3² assigned the matter to Relator sitting as Circuit

within ten days of the designation of the trial judge or prior to commencement of any proceeding on the record, whichever is earlier."

² "7.3 CERTIFICATION TO CIRCUIT DIVISION

When a request for a trial by jury is made, the Probate or Associate Circuit Judge presiding over that action shall certify and transmit the file to the Clerk of the

Judge by Assignment effective upon certification for trial on the record with procedures applicable before circuit judges. There is no question that Respondent was designated as trial judge for jury trial in the underlying matter on February 20, 2004 (and only after Relator's motion for jury trial), and that Relator's motion for change of judge under Rule 32.07 was timely filed on February 26, 2004, within the ten-day window provided after designation of Respondent as trial judge, pursuant to Rule 32.07(b).

Wherefore, Relator contends that Respondent improperly rejected Relator's application for change of judge as to deny Relator relief under Rule 32.07 inconsistent with the plain meaning of the Rule as is consistent with well-established general rules of construction and the particular preference given under law to Rule 32.07.

Circuit Court where it shall be filed and the case is hereby assigned to the Probate or Associate Circuit Judge making the certification for trial on the record with procedures applicable before Circuit Judges. Municipal Judges shall notify the Presiding Judge of a jury request.

Cases which are certified to the Circuit Court by order of the Associate Circuit Judge, due to pleadings filed in the case where the case now exceeds the jurisdiction of the Associate Circuit Court, are hereby assigned to the Associate Circuit Judge making the certification."

II.

A Writ of Prohibition or, in the alternative, Mandamus should issue to compel the granting of Relator’s motion for change of judge pursuant to Rule 32.07 because a designated trial judge’s interpretation of a local circuit court rule for administrative assignment of misdemeanor causes for jury trial before a circuit judge such that a defendant’s application under Rule 32.07 would be denied for failure to apply within ten days after initial plea before an associate circuit judge where that associate circuit judge is also the designated trial judge by operation of the court rule is misplaced in that such an interpretation of such a local rule specifically prohibits what Rule 32.07 permits as well as being unduly burdensome to a defendant in a manner inconsistent with the Missouri Supreme Court Rules and well-established law.

Respondent’s consistent legal theory in this cause³ to date has been that 44th Circuit Local Rule 7.3 effectively “pre-designates” the associate circuit judge in a county of the 44th Circuit for any jury trial of a misdemeanor in the Circuit Division within any county of the Circuit. Respondent’s theory would appear to be that (1) because RSMo. Section 478.245 authorizes judicial circuits to adopt

³ See Respondent’s Order denying relief on motion to reconsider (Relator’s Exhibit 8, A23 second paragraph); Respondent’s Suggestions in Opposition, 2; and Respondent’s Answer in Prohibition, 2-3.

local rules, including rules that provide for assignment systems for the circuit court of each county, and (2) because the 44th Judicial Circuit has adopted such an assignment system in its Local Rule 7.3 providing that, when a request for a trial by jury in a misdemeanor cause is made and upon certification and transmission to the circuit clerk, the associate circuit judge previously hearing the case in Associate Division is designated for trial on the record, therefore (3) application for change of judge under Rule 32.07(b) after such assignment to Circuit Division is ineffective despite the express language of the Rule concerning timing of the application because application must have been made within ten days of the initial plea entered in Associate Division.

Respondent's theory runs contrary to this Honorable Court's own Rules and the decisions of the Appellate Courts. Rule 19.01 prescribes that Rules 19-36, inclusive, govern criminal procedure in the courts of Missouri. Rule 19.02 further prescribes that Rules 19-36, inclusive, are promulgated by this Court under the authority of Section 5 of Article V of the Missouri Constitution and supercede all statutes and court rules inconsistent therewith. Together with the well-established law concern legal construction (and, in particular, that law addressing the Rules on change of judge), these rules create a priority in procedural authority that a defendant may rely upon with certainty and confidence, without fear of arbitrary conduct in the courts of Missouri.

The Appellate Courts of Missouri have previously visited the issue of this prioritizing of the Supreme Court Rules versus local rules In *State ex rel. State v.*

Riley, 992 S.W.2d 195, 196 (Mo. banc 1999), this Court, alluding to *Douglas v. Thompson*, 286 S.W.2d 833 (Mo. 1956), stated that, although a local court requirement may be imposed provided that the additional requirement is not unreasonable under the circumstances, not unnecessarily burdensome, or not inconsistent with the Rules, a local court rule is inconsistent with this Court's Rules if the local rule specifically prohibits something this Court's Rules permit or specifically permits something forbidden. *Id.* at 196.

The Western District Court of Appeals addressed a situation analogous to Relator's in *State ex rel. Burns v. Gillis*, 102 S.W.3d 66 (Mo.App. W.D., 2003). In the underlying civil matter in that cause, plaintiff/relator had served notice on defendant but had filed return of service after the date specified under the local court rule. When plaintiff then filed for entry of default judgment, the trial judge/respondent denied the motion – and personal jurisdiction - for failure to adhere to the local rule. After the trial judge/respondent then refused motion of plaintiff/relator to set a trial date, plaintiff/relator filed his petition for writ. What the Western District recognized was the problem that occurs when a trial judge interprets the local rules in a manner not within the plain meaning of these rules that has the effect of deny parties relief that should have been granted under the plain meaning of the Rules of this Court.

In that matter, the respondent judge had used his individualized interpretation of the local rule concerning return of service (in particular, to read an inference of sanction into the local rule where no express language existed to

support such inference) to deny jurisdiction under the respondent judge's similar interpretation of Rule 54.22(a). The Western District rejected this misuse of the local rule by the respondent judge to create such a sanction not contemplated by the plain meaning of that local rule to then further deny jurisdiction under Rule 54.22(a) in a manner not contemplated by the plain meaning of that Rule. From the decision, it appeared that the respondent judge made an additional argument for judicial efficiency to quash the writ to prevent "tipping of the scales" too far in favor of plaintiff's attorneys. *Id.* at 73. However, the Western District found that interpreting the lack of compliance with the local rule – regardless of the rationale – to permit the trial court to deny jurisdiction under the trial court's interpretation of the Supreme Court Rule was inconsistent with *Riley*, and such an interpretation violated the statutory scheme governing local rules of civil procedure, *Id.* at 70, citing *Riley* at 196; impeded access to the courts, *Id.* at 72; and was an abuse of discretion inconsistent with statutory law, unduly burdensome to plaintiffs, and unnecessary to protect the rights of defendants. *Id.* at 73.

In the present matter, it is not inconsistent for this Honorable Court to apply a similar appropriate standard for local court rules as they relate to the Rules of Criminal Procedure. The difficulty lies not in the plain meaning of Local Rule 7.3 but in Respondent's interpretation of that local rule, and it is that interpretation that fails both the *Riley* test and the *Gillis* test. While, on the face of it, Local Rule 7.3 is an administrative rule allowing for efficient assignment of cases for jury trial as necessary within the Circuit, Respondent has misapplied this local rule contrary

to its plain meaning of the local rule by inferring a “pre-designation” of his person as trial judge where no even colorable language exists. On the contrary, from the plain meaning of the local rule, the administrative effect of the rule only comes into effect upon the motion for jury trial: “[w]hen a request for a trial by jury *is* made, the Probate or Associate Circuit Judge presiding over that action *shall certify and transmit* the file to the Clerk of the Circuit Court where it shall be filed and the case *is hereby* assigned to the Probate or Associate Circuit Judge making the certification...” 44th Circuit Local Rule 7.3, first paragraph (emphasis added). As applied to this present cause, Local Rule 7.3 only began to apply to the underlying case when Relator filed his motion for jury trial on February 20, 2004. Only upon application for jury trial is there certification and transmission to the Circuit Division, and only upon application for jury trial is there assignment or designation of the trial judge to hear the case. There is no “pre-designation” of Respondent as trial judge by any fair reading of the local rule as applied to the underlying cause at any time prior to February 20, 2004.

It is therefore Respondent’s interpretation of Local Rule 7.3 – in other words, the meaning that Respondent ascribes to the local rule and further insists should be the acceptable meaning – that fails the *Riley* test by specifically prohibiting something the Supreme Court Rules permit. *Riley* at 196.

Respondent’s interpretation of Local Rule 7.3 asserts that a misdemeanor defendant wanting a jury trial must exercise his rights under Rule 32.07(b) before moving for jury trial and a Circuit Division trial judge duly designated to preside

at that trial. As noted above, absolutely nothing in Rule 32.07 requires or supports that interpretation: Rule 32.07(b) clearly states that a defendant shall file a motion for change of judge under the Rule within ten days of initial plea or, if designation of the trial judge takes place more than ten days of initial plea, within in ten days after that designation or prior to commencement of any proceeding on the record, whichever is earlier. Respondent was assigned as trial judge in the underlying cause in the Circuit Division on February 20, 2004, and Relator made his timely application under Rule 32.07 on February 26, 2004.

Respondent's interpretation of Local Rule 7.3 also fails the *Gillis* test in that Respondent's interpretation is unduly burdensome to Relator. *Gillis* at 73. Respondent's interpretation would require a defendant charged with a misdemeanor, a citizen accused no trial court can competently presume to be personally knowledgeable about either the Supreme Court Rules or the 44th Circuit Local Rules, to be prepared to assert his rights under Rule 32.07 as constrained by Respondent's interpretation of Local Rule 7.3 at his initial plea in Associate Division. Moreover, Respondent further asserts that he is not technically required, under Rule 21.10, to give notice of a defendant's rights under Rule 32.07 at his initial plea. See Respondent's Answer in Prohibition at 3. When such a defendant is advised to seek out and obtain representation and to appear in court with counsel at his next appearance, that court appearance will ordinarily be, according to Respondent's docket schedule for criminal cases for 2004, not less that 14 days away (See Relator's Exhibit 10, A25), This places an enormous – and unknown

and unknowable - burden on a defendant to identify, contact, retain, and then discuss the matter with counsel in sufficient time for counsel to make competent and written application under Rule 32.07 before counsel could ever appear in court on behalf of such a defendant. In the underlying matter to this present cause, Relator entered his initial plea – without counsel present, retained, or appointed - on January 13, 2004, and Respondent – sitting as associate circuit judge – then set the underlying case for trial for February 24, 2004. (See Relator’s Exhibit 2, A9). Relator left Respondent’s Associate Division court on January 13, 2004, without knowledge, without notice, and without counsel, only aware that he was facing a trial in six weeks and that he was left to fend for himself in getting ready for trial. It is clear that Respondent’s interpretation of Local Rule 7.3 as it would impact on Rule 32.07 would be a throwback to the “sporting theory of justice” so discredited in this State. See *State v. Paul*, 437 S.W2d 98, 103 (Mo.App. 1969).

Respondent has also made judicial efficiency arguments in support of his interpretation of Rule 32.07(b): first in the underlying cause in his written order of March 5, 2004, and second in Respondent’s Answer in Prohibition. In the first instance, Respondent asserted that to grant Relator's motion in this matter is tantamount to giving Relator two opportunities to disqualify the same judge or two different judges. However, there is no record that Relator was given notice in open court – or through counsel - of his right, under the Rule, to disqualify Respondent (sitting in the Associate Division). Where there is no knowledge of a right that may be asserted, there can be no knowing or voluntary waiver of that right.

Relator cannot take a second bite of such an apple when the apple was never first offered to him.

Furthermore, Respondent is not the same judge for purposes of Relator's case first in the Associate Division, then in the Circuit Division. In the Associate Division, Respondent sat as Associate Circuit Judge of Ozark County, to which he was duly elected by the voters of that county. In the Circuit Division, Respondent is sitting by appointment of, and in lieu of - by operation of the local court rules - the duly elected Circuit Judge of the 44th Judicial Circuit. Respondent may be the same person, but he is not the same judge as a matter of judicial identity.

This situation is reminiscent of the fact pattern confronted by the Southern District Court of Appeals in *State ex rel. Delgado v. Merrell*, 86 S.W.3d 468 (Mo.App. S.D. 2002). In *Delgado*, the relator appealed a civil judgment entered by the respondent sitting as associate circuit judge. During the pendency of the appeal, the respondent was defeated for re-election and stepped down from the bench before the relator's appeal was successful and the case remanded. However, the respondent was subsequently reappointed to a newly created associate circuit judgeship, and the remanded case assigned to his new associate division. The respondent – before whom the presiding circuit judge directed the relator's counsel to take the inevitable Rule 51.05 motion - denied the change of judge motion, and the relator petitioned in prohibition.

The respondent in *Delgado* asserted that he was the same person as the designated judge during the original civil trial and after remand in his new

associate division and therefore timely application for change of judge must have had to take place during the first trial since "...the identity of the Respondent as judge remain[ed] the same, irrespective of the route the judge and the case may have taken to arrive at that point." *Id.* at 470. . The court in *Delgado* rejected that rationale - and found for that realtor - on the basis that no authority was presented, or research revealed, by respondent that an individual who served as judge in a case who left the bench but later resumed his judicial duties could subsequently deny a motion for change of judge filed in the latter action. *Id.*, 471-472.

A similar analysis applies here as well. Not unlike the loss of jurisdiction when a felony case is bound over following waiver of preliminary hearing or a finding of probable cause at the close of preliminary hearing, when a criminal case is transferred by operation of law from an associate division to a circuit division for jury trial, that associate division loses jurisdiction over the case regardless of the person of the judge sitting in the associate division. For purpose of Rule 32.07(b) then, as in its counterpart Rule 51.05, in light of *Delgado*, the actual person of the judge is irrelevant to the determination of whether or not a motion for change of judge is timely filed if the basis for denial being asserted is that the same person-as-judge who dealt with the case in an associate division is also the same person dealing with the case in a circuit division and hence no relief should be granted.

The second version of Respondent's judicial efficiency argument, as contained in his Answer in Prohibition, asserts that to grant Relator's motion will

insure that requests for misdemeanor jury trials will increase substantially; will create an undue burden on the Circuit Clerk, and develop a new way for defendants to create undue delay. Relator's Answer in Prohibition, 5. No evidence was offered in Relator's Answer to support this conclusion. However, even if some minimal evidence were offered to support Respondent's assertion, judicial efficiency as proposed by Respondent is not a criterion under either *Riley* or *Gillis* to validate or invalidate a local court rule. See *Riley* at 196; *Gillis* at 73. In fact, the Western District seemed to give little weight to that rationale as offered in *Gillis*, *Id.* at 73.

Wherefore Relator contends that Respondent improperly applied 44th Circuit Local Rule 7.3 so as to deny Relator's application under Rule 32.07 such that Respondent's interpretation of the local rule specifically prohibited what Rule 32.07 permitted inconsistent with this Court's holding in *State ex rel. State v. Riley*, 92 S.W.2d 195 (Mo. banc 1999) as well as being unduly burdensome to the Relator inconsistent with the holding of the Western District Court of Appeals in *State ex rel. Burns v. Gillis*, 102 S.W.3d 66 (Mo.App. W.D. 2003).

CONCLUSION

WHEREFORE, for the reasons asserted in Point I, because the plain meaning of Rule 32.07 allows a defendant to apply for change of the trial judge within ten days of the designation of that judge if that designation occurs more than ten days after the initial plea is entered and, if the application is timely, for that judge to promptly sustain that application, a writ of prohibition or, in the alternative, mandamus should issue.

Furthermore, or in the alternative, for the reasons asserted in Point II, because Respondent's reliance on 44th Circuit Local Rule 7.3 to deny Relator's motion is misplaced because his interpretation of the local rule specifically prohibits what Rule 32.07 permits as well as being unduly burdensome to the Relator in a manner inconsistent with the Missouri Supreme Court Rules and well-established law, a writ of prohibition or, in the alternative, mandamus should issue.

Respectfully submitted,

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Certificate of Compliance and Service

I, Robert H. Brandon, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2002, in Times New Roman size 13 point font. Excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 5,172 words, which does not exceed the 31,000 words allowed for relator's brief.

The floppy disk filed with this brief contains a complete copy of this brief. It has been scanned for viruses using a McAfee VirusScan program, which was updated on August 18, 2003. According to that program, the disks provided to this Court and to all parties are virus-free.

True and correct copies of the attached brief and a floppy disk containing a copy of this brief were mailed, postage prepaid this ___ day of August, 2004, to (1) The Honorable John Jacobs, Respondent, Post Office Box 278, Gainesville, MO, 65655-0278, (2) Mr. Thomas W. Cline, Attorney for Respondent, Post Office Box 67, Gainesville, MO, 65655-0067, and (3) Deborah Daniels, Chief Counsel, Criminal Division, Missouri Attorney General, P.O. Box 899/207 West High Street, Jefferson City, MO 65102-0899.

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